

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

LEAGUE OF CONSERVATION VOTERS *et al.*,)
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)
Plaintiffs,)
)
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 v.) No. 3:17-cv-00101-SLG
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)
DONALD J. TRUMP *et al.*,)
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Defendants,)
)
)
AMERICAN PETROLEUM INSTITUTE and STATE)
OF ALASKA,)
)
Intervenor-Defendants.)
)

DECLARATION OF BRENDAN CUMMINGS

I, Brendan Cummings, hereby declare as follows.

1. I am a member of the Center for Biological Diversity (“the Center”). I have also been on staff at the Center for more than 20 years and currently serve as Conservation Director of the organization. The Center’s members and staff, including myself, rely on the Center to represent our interests in the preservation of imperiled species and habitats such as those in the Arctic and Atlantic Oceans.

2. I work with our legal and scientific staff and other organizations to advance the Center’s goal of wildlife and habitat protection through administrative actions and reform, scientific research and the judicial process. In my capacity at the Center, I am familiar with all aspects of the Center’s activities and organizational interests related to Alaska in general and the Beaufort and Chukchi Seas in particular. I am also familiar with all aspects of the Center’s activities and organizational interests related to the Atlantic Ocean.

3. The Center is a nonprofit corporation incorporated in the State of California. The Center works through science and environmental law to advocate for the protection of endangered, threatened, and rare species and their habitats throughout the United States and abroad.

4. The Center has more than 63,000 active members. Center members reside throughout the United States, including in Alaska and along the Eastern seaboard, as well as in other countries. The Center works to ensure the long-term health and viability of animal and plant communities across the United States and elsewhere, and to protect the habitat these species need to survive. The Center believes that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked.

5. As part of its mission, the Center provides oversight of governmental programs, policies, and activities that affect wildlife and endangered species. The Center has been at the forefront of efforts to hold the government accountable for its obligations under the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), National Environmental Policy Act (NEPA), and other laws protecting wildlife and its habitat. The Center regularly engages in protection efforts and campaigns to ensure that our nation's environmental laws are enforced with respect to wildlife and its habitat.

6. The Center actively develops and disseminates to its members; policymakers; local, state, federal and international governmental officials; non-profit organizations; and interested members of the general public a wide array of educational and informational materials concerning the status of and threats to wildlife species, including threatened and endangered species and their habitats.

7. The Center has been actively involved in protecting Alaska's wildlife since the early 1990s. Our involvement has included submitting ESA listing petitions for the Queen Charlotte goshawk, Alexander Archipelago wolf, Cook Inlet beluga whale, Aleutian sea otter, yellow-billed loon, Kittlitz's murrelet, polar bear, bearded, ringed, ribbon and spotted seals, Pacific walruses, cold water corals and Lake Iliamna seals. We have also submitted petitions seeking critical habitat designations for bowhead whales and Pacific right whales. Additionally, we have submitted petitions seeking "depleted" designation under the MMPA for Alaskan sea otters and the AT1 stock of killer whales.

8. Besides our administrative petitions, the Center has also engaged in numerous other activities related to the protection of biodiversity and habitat in Alaska such as comments, appeals and/or litigation regarding forest plans, timber sales, oil and gas leasing, fisheries

management, and other environmentally damaging activities. In sum, the Center has a significant history of advocacy and involvement in environmental issues affecting Alaska species. Our current involvement with regard to issues affecting the Alaska's Arctic Ocean falls squarely within our organizational interests and mission.

9. Specifically, with regard to the Arctic Ocean, the Center has been working to protect polar bears since 2001. Oil and gas development threaten to disrupt this species. Moreover, the largest threat to the species is loss of its sea ice habitat from global warming, which will be exacerbated by development and use of fossil fuels such as the oil and gas in Alaska's Arctic. In 2005 the Center petitioned the U.S. Fish and Wildlife Service (FWS) to list the polar bear as a threatened species under the ESA, and, after the Center sued, the polar bear was listed in 2008. Center advocacy led to the designation of critical habitat for the polar bear in the Arctic, and the Center has intervened in several lawsuits to help FWS defend protections for polar bears. The Center continues to fight for greater protections for the polar bear in the U.S. and abroad.

10. The Center has been actively involved in attempting to protect other unique Arctic wildlife resources. For example, in February 2000, the Center filed a petition to designate critical habitat for the Bering-Chukchi-Beaufort Sea Stock of the bowhead whale under the ESA. Bowheads migrate through these waters, and development there would pose risks to the bowhead from onshore oil spills that reach the marine environment, and from marine vessels transporting materials or equipment to onshore operations.

11. Additionally, the Center has been very involved in attempting to protect the Pacific walrus under the ESA. In 2008, the Center filed a petition to list the Pacific walrus under the ESA, and subsequent lawsuits challenging the agency's failure to respond to the petition. The

Center is currently litigating the FWS's recent decision that protecting the walrus under the ESA was not warranted. The Chukchi Sea provides vitally important habitat for the Pacific walrus. Walruses rely on sea ice in the Chukchi Sea to rest, rear their calves, avoid predators, and reach their feeding grounds. Oil development there would exacerbate the effects of climate change already melting the species' sea ice habitat and pose risks to the animals from oil spills and noise pollution.

12. The Center has also been actively involved in protecting wildlife in the Atlantic Ocean for several years. For example, the Center submitted a petition and filed lawsuits to help protect more than 39,000 square miles of ocean as critical habitat for North Atlantic right whales. The Center also successfully petitioned the federal government to require ships to slow down at certain areas at certain times of year to protect the whales from getting run over by large ships. And the Center is actively involved in litigation to prevent North Atlantic right whales from getting tangled up in fishing gear, and has worked for years to reduce the entanglement risk of these whales. Despite these protections, the species is in decline and scientists predict the species could be functionally extinct within 20 years. Adding the additional stressors of seismic exploration for oil and gas or oil development in the Atlantic could drive the species to extinction.

13. In addition to its work protecting North Atlantic right whales, the Center has also petitioned for protection of Atlantic bluefin tuna and filed a lawsuit to prevent overfishing of the species. The Center has also petitioned for ESA protection for loggerhead sea turtles and black-capped petrel and has filed lawsuits to help secure these protections.

14. The Center has also invested substantial resources into ongoing research and public education regarding the plight of species that reside in and use the Arctic and Atlantic

Oceans. The Center maintains an active website and quarterly newsletter in which we have highlighted to our members and the public on numerous occasions our concerns regarding development across Alaska's Arctic, including the Beaufort and Chukchi Seas and threats to wildlife living in the Atlantic Ocean and along its shores.

15. In order to protect its significant interests in the species and habitats of these areas, the Center has put a great deal of resources into preventing harmful seismic activity and oil drilling. Among other things, the Center challenged Shell Oil's plans to drill in the Arctic Ocean, and submitted extensive comments to the federal government opposing its plan to allow seismic oil and gas exploration in the Atlantic Ocean.

16. In sum, the Center has a strong organizational interest in the species and habitats of the Beaufort and Chukchi Seas, and the Atlantic Ocean, and the proper and lawful management of these public waters. In advocating for these interests, the Center represents itself and its members. Center members have visited and will continue to visit the Beaufort and Chukchi Seas, the Atlantic Ocean, and their shores for recreational, aesthetic and educational purposes including hiking, wildlife watching, and photography. Center members rely on the Center to represent their interests with regard to advocacy on behalf of the species and habitats of these areas.

17. Seismic exploration and oil and gas development in the Beaufort and Chukchi Seas and in the Atlantic Ocean would irreversibly harm the Center's members' use and enjoyment of the area and the species that rely on the area. Center members' interests in viewing wildlife and enjoying untrammeled landscapes would be harmed by seismic exploration and oil and gas development in these areas. Such activities would destroy important habitat and disturb species such as the polar bear that are already imperiled by global warming and offshore oil

development, and the North Atlantic right whale already struggling with survival due to entanglement in fishing gear and other threats. The Center's efforts to protect polar bears, walrus, bowhead whales, and other Arctic species, as well right whales, bluefin tuna, sea turtles and other Atlantic species could all be for naught in the event of a large oil spill.

18. I also have a long-running personal interest in the species and landscapes in Alaska generally, and in the Arctic in particular. My interests in these areas will be irreversibly harmed by opening these areas to oil development.

19. My first visit to Alaska was in 1987 when I served as crew on a conservation vessel documenting the impacts of drift-gillnets on marine mammals and seabirds. As part of that trip I visited Dutch Harbor, various Aleutian Islands, and the Pribilof Islands. We saw innumerable marine mammals, including thousands of fur seals, Steller sea lions, sea otters, harbor and Dall's porpoise, killer whales, humpback whales, gray whales, several beaked whales, and other species. As a result of that voyage I developed a strong interest in Alaska wildlife, particularly the marine mammals and seabirds of the Bering Sea and Arctic. I have subsequently visited Alaska more than a dozen times, in each case, at least in part, to view wildlife.

20. In 1999 I visited the Alaskan Arctic for the first time. I helped organize, and participated in, a 3-week raft trip down the Colville River. We started near the confluence with the Kiligwa River and explored approximately 250 miles of the river and adjacent areas between the put-in and our take-out at Umiat. Along the way I was fortunate to observe numerous different wildlife species, including mammals such as grizzly, caribou, weasels, and lemmings, raptors such as peregrine falcons, gyrfalcons and rough-legged hawks, and waterbirds such as red-throated and yellow-billed loons and brant. At several places, such as along the Killik River

and near Umiat, I went on extensive hikes looking for wildlife, as well as rare flowers, bryophytes, and fungi..

21. My enjoyment of Alaska's Arctic on this trip was not only of the wildlife, but also of the sense of isolation, wilderness, quiet, and the "unspoilt" nature of the place. Over the course of three weeks on the river, we saw no other people until we reached Umiat. We only saw one plane fly overhead. While the primary experience was of an area seemingly untouched by industry, in a few places we saw the debris and damage of previous oil exploration and related human activities: old ice roads, piles of abandoned 55-gallon drums, and of course the development and detritus of Umiat. Seeing such things is, I fear, but a taste of the much greater devastation and impact that further oil development in the Arctic Ocean would bring.

22. I visited the Arctic National Wildlife Refuge in 2000. On this trip I was fortunate to see wolves, musk-ox, caribou, long-tailed ducks, common eiders, Pacific brant, and numerous other species of wildlife. This trip reaffirmed my interest in the Alaskan Arctic, the species that inhabit it, and the wilderness values the area maintains. On that trip we reached the Beaufort Sea coast and paddled out to a barrier island. I also ventured out onto the sea ice and observed a bearded seal. I spent many hours scanning the sea ice and open water leads looking for polar bears, seals and other marine life. At the end of that trip we flew along the Beaufort Sea coast to Kaktovik, during which time I was able to observe and enjoy the beauty and wildness of the region.

23. While my 2000 trip to the Beaufort Sea provided me with the opportunity to observe and enjoy the wildlife of the region, it also allowed me to view firsthand the threats to the region from oil and gas exploration activities. For the last several days of our trip, during certain atmospheric conditions, the Warthog exploration rig would loom into view over the

horizon. My understanding is that it was used a couple years earlier but had yet to be removed from the area. Each time it became visible, the experience of being in an unspoiled wilderness area abruptly transitioned into being in an area threatened and tarnished by industrial development, greatly diminishing my experience. I fear that the activities flowing from the state's oil and gas development plans will have a similar effect on a broad region of Alaska's Arctic.

24. Another trip to Alaska's Arctic was in April 2008 when I visited the Beaufort and Chukchi Seas. Based out of Barrow, I paid multiple visits to these frozen seas, walking and driving along the coast, and traveling by foot and snow machine on the sea ice itself, always looking for wildlife. The highlight of this trip was a snow machine trip several miles onto the ice of the Chukchi Sea, reaching the area where the shore-fast ice ends and the first major lead in the ice begins. In this area I looked for polar bears, seals, birds and whales. I saw a ringed seal, king eiders and black guillemots. The bowhead whale migration past that area was just getting underway, so seeing bowheads was a real possibility, which greatly added to my experience. Unfortunately, I did not see any bowheads on that trip. Nevertheless, the fact that seeing these incredible animals was possible was a primary motivation for traveling that far out on the ice. I certainly intend to return to the area an attempt to observe and appreciate bowhead whales. Anything that made that more difficult, such as industrial noise that drove these whales further from the coast, would hinder those efforts.

25. Given my particular interest in polar bears, I have visited the Arctic over a half-dozen times with the specific intent to see the species, and have been fortunate enough to see polar bears on most of these trips. My next such trip is set for November or this year. I also

intend to visit the Arctic Refuge, including the Beaufort Sea coast and Kaktovik in late summer 2019.

26. In sum, I have been to the Beaufort and Chukchi Seas specifically and the Arctic generally many times over the years and intend to continue to do so. I have derived a great deal of personal fulfillment from these trips. My visits there rendered my interests in Arctic wildlife into a concrete interest in the species present in and dependent upon the unspoiled habitats of the region. President Trump's executive order purporting to reverse protections that barred new oil and gas leasing in the Chukchi Sea and most of the Beaufort Sea threaten to gravely harm the species and habitats of the Arctic Ocean, and consequently, my interest in them.

I declare under penalty of perjury that the foregoing is true and correct.



Dated: 6/6/18

Brendan Cummings